

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**

July 14, 2006

State Capitol, Room 152, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Senator Sam Kitzenberg, Chairman

Representative George Groesbeck, Vice Chairman

Representative Walter McNutt via conference call

Senator Ken Toole

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel

Larry Nordell, Economist

Mary Wright, Attorney

Mandi Shulund, Secretary

**VISITORS PRESENT**

Charles Homer, Montana Department of Environmental Quality

John Fitzpatrick, NorthWestern Energy

Anne Hedges, Montana Environmental Information Center

**CALL TO ORDER**

The meeting was called to order by Senator Kitzenberg.

**MINUTES OF THE PREVIOUS MEETING**

MOTION: Senator Toole moved approval of the minutes of the March 9, 2006 meeting.

VOTE: The motion passed unanimously.

### **DISCUSSION OF MERCURY EMISSION RULEMAKING**

Charles Homer, Technical Support Supervisor of the Air Resources Management Bureau with the Montana Department of Environmental Quality (DEQ), gave a report on Mercury Emission Rulemaking. He is responsible for rulemaking and other legislative issues. The DEQ is responsible for air quality regulation. The Board of Environmental Review (Board), as a separate agency, has the authority to adopt administrative rules for air quality. A rule that DEQ is currently working on is the clean air mercury rule by responding to a federal requirement. In 3/05 the EPA published a final rule, referred to as the clean air mercury rule, which required each state to submit a plan for mercury control by 11/06. The plan requires nation wide mercury control of a 30% reduction by 2010 and a 70% reduction by 2018. In 3/06 the board authorized initiation of rule making and DEQ has been working as staff to the board on developing certain proposals. The noticed rule contains an emission limit of .9 pounds per trillion BTU for all existing and new coal-fired power plants in the state and also includes participation in the nation wide cap and trade system until 2015. Hearings were held last spring and the public comment period ended on 7/6/06. DEQ staff is preparing comments for board review, which anticipates deliberations on the rule 7/21, with no action taken until the September meeting to meet the deadline of 11/06 for submitting a plan.

Existing facilities are the Colstrip plant, the Corrette plant, the Lewis and Clark Station at MDU, and the Colstrip Energy Limited Partnership. The proposal also contained provisions for alternate emission limits for facilities with control equipment not being able to meet the .9 limit immediately. No ending point for participation in the trading was set and DEQ felt that having facilities in compliance by 2010 was somewhat optimistic, particularly the existing facilities, and that 2015 was

appropriate. All the trading will allow is additional growth beyond the 298 cap and if the state does not participate in cap and trade, the 298 pounds in 2018 becomes a hard limit. Ways of getting around the hard limit are by controlling existing facilities but DEQ believes putting limits on allows the state sufficient protection to be allowed to participate in cap and trade. Other parties believe there should be no trading in mercury due to it being a neurotoxin and that there should not be a rule allowing violation of that limit. Representative Groesbeck asked what the emission level was right now and Mr. Homer said they were currently between 900-950 pounds for Montana. Senator Kitzenberg asked if DEQ has figured the cost to industry and in turn to consumers once these restrictions are added on. Mr. Homer said that DEQ is currently working on an economic analysis and once completed, would share that information with the committee. Senator Kitzenberg also commented on the frustrating permit process of developing an ethanol plan in Montana. Senator Toole asked to hear more about the cap and trade process. Mr. Homer said the cap and trade systems existing under EPA's direction are the SO<sub>2</sub> trading program under the acid rain program and also some NO<sub>x</sub>-trading mainly on the east coast under the CARE program. Originally mercury was a hazardous air pollutant supposedly subject to maximum achievable control standards under EPA's air toxic rules. At the same time, the EPA published the clean air mercury rule with a regulatory finding saying that mercury from coal fire power plants was not to be regulated under the toxic rules under section 112, but was to be regulated under section 111, generally referred to as new source performance standards. Once the regulatory finding was established, the EPA was able to establish the trading program. In response to Senator Kitzenberg's comment regarding the permit process, Mr. Homer said that Montana's requirement to issue air quality permits within 60-75 days of receiving a complete application is a much quicker requirement than found in any other state, but there are other factors that slow the process down. DEQ understands the need to be efficient and keep the process moving, which DEQ will continue to do. John Fitzpatrick of NorthWestern Energy (NWE) spoke next, saying he appreciated the fact that MCC is paying attention to this issue. NWE feels this is an issue that may substantially impact rate payers in the future but it is difficult to specify today

what the impact might be. DEQ did ask NWE to prepare testimony to try and conceptualize potential cost impacts for this rule. The fundamental problem NWE has in working with this rule is that there is no technology commercially available today that can meet the federal requirements of 70% removal or state requirements of 80-90% removal. Montana coal burned in Montana power plants has very low mercury content and low chlorine content so the mercury emitted comes out as elemental mercury. Elemental mercury can be converted in to methyl mercury, which is the type absorbed by fish, but a very small percentage of that actually occurs. The health effects of mercury actually come from the consumption of fish, not from breathing it in. NWE tried to figure rate payer costs due to particular technology involving, more than likely, the use of injectable supplies, either activated carbon or halogens, which are consumable and potentially expensive per ton of coal. NWE used a general factor to try and estimate the cost for consumption of these supplies and for installing mercury control technology at Colstrip, and came up with a modest to low number of about \$250 million with an additional \$250 million being spent for other kinds of adjustments. As technology becomes more certain and costs more definitive, better numbers can be provided in the future, but currently there is no mercury problem in the US or in the world. Mr. Fitzpatrick provided testimony of Jack W. Snyder, M.D., J.D., Ph.D. Dr. Snyder is a witness who appeared on behalf of Western Environmental Trade Association before the Montana Board of Environmental Review. Senator Toole asked why health officials are largely concerned with the consumption of fish. Mr. Fitzpatrick said that, based on Dr. Snyder's testimony, mercury levels in fish have always been present and that mercury is not caused by power plant emissions.

Anne Hedges of the Montana Environmental Information Center said that the credibility of Dr. Snyder's testimony provided by Mr. Fitzpatrick is very much in question. Mercury is particularly dangerous to fetal development. Mercury prevents neurons from forming and the toxic effect of mercury in the womb is irreversible and is also shown to impair cardiac health in humans. Mercury has been found to be toxic for every industry except for coal fired power plants and EPA has had to regulate mercury since 1990, researching all industries one by one. The largest

emitter in the US providing 40% of mercury in the air is coal fired power plants. 92% of the human caused mercury air emissions in Montana are coming from coal fired power plants and are the remaining problem. It costs new power plants less than \$1 million to install mercury control equipment and plants across the country, including some in Montana, have agreed to install mercury control technology. Once regulations are in place all plants will install the technology. The technology is commercially available and it is relatively inexpensive in the air pollution arena. Installing the technology will be expensive for Colstrip because this is an old facility with very little pollution control. Ms. Hedges also said that Montana has one of the fastest air quality permitting systems in the United States. The air quality permitting process is dictated by the federal government, but each state has a different mechanism, or process, for carrying out the requirements. Montana has very few requirements, especially for coal fired power plants, so what holds up the process is the time it takes the facility to submit a complete application. DEQ is required within 30 days of receiving an application to tell the facility what is missing from the application and there is no timeline for resubmitting the information. Montana has one of the fastest air quality permitting processes in the US. Senator Toole suggested that the committee stay out of this issue and that it should be dealt with, if necessary, in some kind of rate case that MCC can take care of, which the other committee members agreed with. Senator Kitzenberg said that the committee will put this item on hold for the time being.

## **BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES**

### **CURRENTLY PENDING:**

#### **NorthWestern Energy**

D2005.11.167 - Electric Trackers: The April Electric Tracker filed 3/15/06 resulted in a residential rate decrease to \$.043121/kWh, or 4.4%; The May Electric Tracker filed 4/14/06 resulted in a residential rate decrease to \$.043211/kWh, or .21% (\$.5 million annualized revenue requirement); The June Electric Tracker filed 5/15/06 resulted in

a residential rate increase to \$.043547/kWh, or .78% (\$1.86 million annualized revenue requirement).

D2005.5.88 - 2005 Annual Electric Default Supply Tracker: This annual tracker looks forward at the next 12 months and also reconciles the unreflected or unrecovered amounts from the prior 12 months. On 11/21/05 Dr. John Wilson filed testimony on MCC's behalf and proposed several adjustments and issues needing discussion. MCC entered into a stipulation with NWE that resolved all but three of these issues. It was agreed upon that NWE would develop a dispatch model to estimate volumes from Basin, the new project in Butte because MCC was skeptical that amounts included in this tracker actually represented amounts received from that project. MCC did not make a recommendation on non recovery of short term purchases, which currently run about 25% of the portfolio, but did reach an agreement that it is important to pursue firm supply so the 25% eventually comes down. On the PPL purchases MCC agreed what was done was appropriate after reviewing other costs needed to be included to get power transmitted to Montana. With the Avista sale, NWE agreed they would be responsible for replacement costs for the power being sold to Avista. NWE anticipated this power coming from MFM and had entered into an agreement with Avista to sell the excess output. Now, it turns out, NWE is having to acquire at market based rates but were charging rate payers the difference between the Avista contract and current market rates. That cost calculated to be \$1.6 million in this tracker period. The PSC issued Final Order 6682d on 7/12/06 with a 3-2 vote. One issue, relating to DSM, that could not be agreed upon was whether it is appropriate for NWE to have incentive based contracts with DSM contractors where the more DSM they achieve the higher their payments. This may seem fine, but the concern is that in conjunction with the lost revenue adjustment mechanism, the company that oversees the performance of these contracts also has an interest in high estimates. The PSC indicated in the Final Order they do not have a concern and would allow this because of the third party review of the DSM program that is going to be conducted 7/07. The second item not agreed upon pertained to \$89,000 in labor expenses associated with a DSM program coordinator.

MCC disagreed with this and the PSC disallowed this as a tracker expense because labor expenses are normally included in base rates. The third item not agreed upon is the way NWE had, in this case, estimated lost revenues. When the application was initially filed, NWE requested just over \$1 million and there was concern that NWE's DSM estimates had actually been done top down, or taken from a 100 megawatt number then allocated to each year rather than bottom up, knowing exactly what will be obtained from that program. The PSC rejected that concern saying that would all be resolved during a review next year and there would be true-ups possibly arising from that review. The selection of the reviewer will include participation of the TAC Committee.

N2005.12.172 – 2005 Electric Default Supply Procurement Plan: This plan can be found at [www.montanaenergyforum.com](http://www.montanaenergyforum.com) and MCC filed comments on 5/5/06. These plans are not for PSC approval or rejection, but are to provide comments from interested parties and from the PSC as guidance. The general idea of the comments was that NWE had inherited from Montana Power Company a planning process with many positive features but that NWE has focused on planning and not actually implementing the plan. In terms of DSM levels, MCC commented that they might have some uncertainty and NWE should have a backup plan in case those volumes don't actually materialize. NWE did file an addendum to their plan indicating they soon would be engaging in an auction process for midterm resources to replace these expiring PPL contracts and wanted reassurance from the PSC that the results would be deemed reasonable. MCC had concerns about this and had been asserting, along with the PSC and NWE, that there is not a competitive market. Results of an auction are therefore bound to be non competitive and unreasonable prices and it would be more advantageous for NWE to use their position as a large buyer to negotiate the most advantageous contracts they could find. Senator Toole asked if it was a concern that NWE may use the auction to let them off the hook for not negotiating a better price. Bob said that is a concern, which MCC has discussed with NWE before they filed their proposal to have the auction. NWE never really says that the benefit of the auction is going to be lower prices but they consistently

say the benefit of the auction is transparency. MCC feels it is another way for NWE to say they are shifting the responsibility for not having acquired these resources and they are not responsible for the auction results. Another concern is the potential they could do better by negotiations.

D2006.5.66 - Annual Electric Tracker: This annual tracker was just filed and there is very little change in current costs, at least at this point, but there is an unreflected account of about \$2.3 million, resulting in a 3.7% increase in supply costs. Also included in this tracker is a proposal to modify their tracker mechanism. The way the trackers are currently done is, for each time NWE comes in with their monthly tracker, they use a rolling 12 month period. The trackers that are coming now therefore reflect projected increases as a result of PPL contracts expiring next July, NWE feels they are going to build a significant over collection due to the way the trackers are configured with this unique circumstance. NWE is projecting they would over collect about \$52 million during this period so they have figured what they believe power costs will be and propose that once the over collections hit \$26 million, NWE will stop the 12 month look forward period and stay with the \$26 million over collection, which will mitigate the price increase that occurs next July when the contracts expire. Also in this tracker is an update that removed the Avista sale pursuant to the stipulation just discussed in D2005.5.88, which reduced the \$2.29 million increase to about \$.6 million. MCC will be filing discovery.

D2006.6.94 – 2006 Avoided Cost Compliance Filing: Filed on 6/22/06, MCC does not participate very heavily in these cases due to the QF situation being significantly minimized for default customers through the restructuring process and the Tier II agreement. We will be monitoring the filing.

D2005.9.133 - Gas Trackers: The April Gas Tracker filed 3/15/06 resulted in a gas cost decrease from \$7.56 to \$7.22 (Residential rates decreased from \$10.78 to \$10.44, or 3.2%); The May Gas Tracker filed 4/14/06 resulted in a gas cost increase from \$7.22 to \$7.52 (Residential rates increased from \$10.44 to \$10.74, or 2.9%);



The June Gas Tracker filed 5/15/06 resulted in a gas cost increase from \$7.52 to \$7.55 (Residential rates increased from \$10.74 to \$10.76, or .22%).

D2005.5.87 - 2005 Annual Gas Tracker: On 1/5/06 George Donkin filed testimony on behalf of MCC and a hearing was held on 2/28/06. Mr. Donkin concluded that NWE had been imprudent in their practices because so far they had not injected as much gas into storage as they could have knowing how much gas storage capacity they had during the injection season. The PSC issued Final Order 6685c on 6/6/06 on a 4-1 vote. The PSC determined it was reasonable for NWE to not acquire additional injections. In the prior two years NWE had injected a little over 7 bcf of gas and in this period they had injected about 4.5 bcf of gas. NWE said they did this based on their view of the current economic circumstances and holding their own belief that prices would come down. The PSC agreed with NWE, saying it was reasonable for them to set current storage in line with prior season withdrawals, with NWE saying they had only withdrawn about 4.5 bcf the prior two years and had gas left over. Senator Toole asked if NWE were pumping a lot of gas into the ground this year. Bob felt that they should be and that the PSC recommended they do so, even though the PSC in this docket found it reasonable for them not to. The PSC also included discussion that cost disallowance could hurt NWE's progress towards investment grade ratings and talked about the benefits consumers receive from investment grade ratings.

D2006.2.21 – Initial Abbreviated Application for Approval of Gas Procurement Plan: NWE, with MCC's support, has been trying to put in place some gas procurement planning to ultimately help reduce NWE's risk of making bad decisions and having disallowances, which Bob feels is an appropriate and worthwhile effort. NWE filed its initial application for approval of a gas procurement plan, which is something MCC has been suggesting and George Donkin on MCC's behalf has long been suggesting financial hedging be looked at as part of gas procurement planning process. MCC filed comments on 4/13/06 along those lines and indicated NWE had not included enough information in their procurement plan. NWE did say they were

going to engage in a layering in process of consistent takes of gas during the injection season rather than trying to time the market. The PSC issued comments not long ago speaking in favor of that layering in process and how it is impossible to time the market, but in fact in the actual tracker the PSC said it was reasonable for NWE to have done exactly that.

D2006.5.58 – Annual Gas Tracker: Filed 6/1/06, NWE is requesting a very small increase in the current gas cost component but are also requesting \$5 million of unreflected account recoveries. The PSC issued Interim Order 6471a on 6/30/06 approving these changes. No procedural schedule has been set yet, but MCC will be filing discovery.

D2004.11.186 – 2005 Electric and Natural Gas Tax Tracker Filing: This filing resulted from the law passed a few legislative sessions ago allowing utilities to track non income tax increases. This case is from the 2005 projected year and the Commission made some adjustments supported by MCC. The main issue here was whether NWE had to reduce the amount claimed to take into account deductibility for income tax purposes, roughly a 40% impact. NWE asserts there is no impact from deductibility while the law provides for taking income tax deductibility into account. The Commission has taken a more literal interpretation of the law and applied it to a deductibility provision. Final Order 6621a was issued on 11/2/05. The PSC disallowed, with MCC's support, the portion of the increased property taxes offset by income tax deductibility. The order has been appealed and MCC has joined in that appeal.

Lewis and Clark County Cause No. BDV 2006-35, NWE v. Montana Department of Public Service Regulation: NWE appealed Final Order 6621a in D2004.11.186 to Lewis and Clark District Court. MCC filed a motion to be joined as a party due to supporting the PSC's interpretation of the law and a brief is due in late August.

D2005.12.170 – 2006 Electric and Natural Gas Tax Tracker Filing: This is the current tax tracker filing projecting 2006 tax levels, and MCC has taken the same position as in the prior proceeding. Proposed electric increases are about \$13 million and gas increases are about \$5 million. A hearing was held on 1/5/06 and as a result, MCC added comments in the briefing phase indicating concerns about how tax increases were being allocated to transmission components of rates due to large FERC jurisdictional transmission activity. This leaves the question of whether some increases should be allocated to customers paying those FERC jurisdictional rates, not just to the default supply customers. Final Order 6716 was issued on 2/13/06, disallowing several items such as the increase attributable to what appeared to be increases in the original cost of regulated property, decreases in the original cost of unregulated property and related taxes, and tribal tax increases. In effect, these disallowances reduced the claimed amounts by roughly 50% and NWE has filed a motion for reconsideration and rehearing. The PSC disallowed a few other components, the first being the increase in taxes related to transmission assets because there was a concern that more transmission is being done now in the federal jurisdiction than in the state jurisdiction and that there had not been an appropriate allocation of the tax increase to the federal jurisdictional customers. The second item that the PSC disallowed was tax increases that related to what appeared to be an increase in the original cost of regulated assets as opposed to a decrease in the original cost of deregulated assets. The PSC issued Final Order 6716 on 2/13/06 and due to those disallowances, the PSC allowed about \$5.6 million. NWE filed a motion for reconsideration and rehearing, which the PSC granted, and NWE filed supplemental testimony. MCC just filed discovery.

D2006.6.82 – Joint Application of NorthWestern Corporation and BBIL for Approval of Sale and Transfer of NorthWestern Corporation/FERC Docket No. EC06-127:

One of these dockets is on the state level and one is on the federal level, since both jurisdictions have some form of approval authority. BBI has agreed to pay just over \$2.2 billion for NorthWestern Corporation and are assuming \$736 million of existing NorthWestern debt. BBI is paying \$987 million in an equity infusion, which is coming

from existing BBI cash and from new equity issuances from BBI. The difference then will be made up of an additional \$505 million debt which is going to be at the holding company level. It is not readily transparent in the application how it will be dealt with for regulatory purposes. On some occasions it is indicated that the capital structure of the company will be unchanged and will be roughly the \$1.7 billion but, the fact is they are paying \$2.2 billion and will somehow have to recover those payments. The application indicates a dual holding company structure, which means NWE will be owned by a US Holding Company, a subsidiary of an Australian Holding company, a subsidiary of BBI. The additional \$505 million debt is going to be held by the US Holding Company and Applicants say the initial debt at least, is non recourse to NWE, but there is no discussion in the application about final financing and the relationship to NWE. Senator Kitzenberg asked Bob if he sees any initial problems with the merger. Bob said that it was too early to tell but so far there are many concerns. MCC is analyzing potential costs and benefits but have not yet filed discovery. Much of the information will come out of discovery since the application is not very thorough. The main concern right now is how the \$2.2 billion purchase price is going to be supported by the revenues that they could expect to receive from the regulated operations of NWE. Another concern is after all the work put into protecting rate payers' interests from subsidiary activities and ring fencing, this kind of corporate structure was never anticipated. Regarding the Information Reporting Requirements, BBI will not be reporting to the SEC. Since this is where a lot of information comes from, MCC will need to look at what reports are filed. This could potentially cause the PSC to establish its own reporting requirements since they will need ready access to sufficient information to follow NWE if the sale is completed.

Also, given the amount of the purchase price, there still are some obligations from the Liberty Infrastructure Improvement Audit they are going to have to fund and carry forward with. There is an interesting mix of intervenors, including a joint intervention of Heartland Consumers Power District and South Dakota Public Power Incorporated, who claim they have transmission agreements and arrangements with NWE that might be implicated in the merger. MCC tries to refrain from taking positions until discovery comes in and preliminary work in putting testimony together

because that is really where analysis and positions are made. Senator Toole asked if the committee is advisory to MCC since the committee itself can not dictate what MCC's position will be, on any given case. Bob said the committee has never been ignored and MCC has appreciated the relationship in terms of respecting the professional aspect of the office and what needs to be done.

### **Montana Dakota Utilities**

D2006.5.77 - Monthly Gas Cost Trackers: The April monthly tracker filed 3/10/06 resulted in a decrease of \$1.04/dk showing current gas costs of \$8.59/dk and the July monthly tracker filed 6/9/06 resulted in a decrease of \$0.86/dk showing current gas costs of \$7.48/dk.

D2003.4.49, D2004.4.55, D2004.5.69 – Annual Gas Tracker Reviews: On 2/23/06 George Donkin filed testimony on MCC's behalf. MDU has a slightly larger storage capacity that has been filled the past several years, including this past year, prior to the heating withdrawal season. Mr. Donkin later concluded that MDU had appropriately handled their storage transactions. MDU purchases from about 20 suppliers, mostly on gas index contracts, and has not been using financial hedges. Mr. Donkin urged the PSC to require MDU to do so in order to control the volatility of gas prices. A hearing was held on 5/10/06.

D2006.4.54 – Annual Gas Tracker Review: This application was filed on 4/11/06, requesting current gas cost decrease of \$0.48/dkt to \$7.21 with a total rate being \$8.34/dkt. MDU is also asking for an unreflected increase of \$.22/dkt from the current amount and are requesting a 36 month amortization of unreflected account.

D2005.10.156 – Application for Natural Gas Conservation Program: This case is similar to some of the lost revenue adjustment mechanisms previously discussed. The PSC issued Interim Order 6697 on 11/3/05 approving the application. MCC filed a Motion for Reconsideration, largely due to the fact that the NWE case was still

pending and the lost revenue adjustment mechanism issue had not been resolved. Larry Nordell filed testimony on 5/23/06 on several of their programs, recommending some of those programs no longer be offered because the amount of savings was not sufficient. A hearing is scheduled for 8/4/06.

D2006.1.2 - PSC Investigation and Direction on Electric and Natural Gas USB: The PSC has instituted an investigation regarding MDU's USB programs because they have gone unreviewed, mainly due to the focus being on NWE. MCC has intervened in this docket.

D2006.7.99 – Petition for Declaratory Ruling: This filing pertains to a 31.5 MW windfarm located in South Dakota. MDU is asking for the developer to let MDU have half of the renewable energy credits associated with this project but wanted them to retain half of the renewable credits. MDU is asking the PSC, for purposes of SB 415, if half of the power with the associated credits would count toward its obligation under that renewable portfolio standard requirement. MDU also asked the PSC if they were to purchase the other half of the renewable energy credits or energy credits anywhere within MISO states, if those credits would also count toward its portfolio standard requirement. MCC is reviewing the application.

### **Williston Basin**

RP00-107-000: Williston Basin Interstate Pipeline is a subsidiary of MDU Resources and is the pipeline and supply function of the utility. 20 years ago MDU separated their gas utility so part of it would be regulated by FERC and not the state PSC. MCC continues to actively participate before FERC on behalf of MDU customers in these Williston Basin cases. A few years ago, FERC issued an order indicating substantial refunds were owed to local customers, and MCC has been trying to free up these refunds by filing motions with FERC that have gone ignored, but recently FERC did issue a final order in this docket that should release these refunds. MDU recently was granted a refund of just over \$5 million for customers in Montana. Williston has appealed this to the US Court of Appeals in the D.C. circuit and MCC

has filed briefs in support of the FERC, trying to get that appeal dismissed. In effect, Williston is asking for the refunds back.

### **Energy West**

D2004.8.113 - EWM Monthly Gas Tracker: The May monthly tracker filed 4/5/06 resulted in a residential rate increase to \$8.56/Mcf; The June monthly tracker filed 5/10/06 resulted in a residential rate decrease to \$8.25/Mcf; The July monthly tracker filed 6/8/06 resulted in a residential rate decrease to \$7.67/Mcf; The August monthly tracker filed 7/7/06 resulted in a residential rate increase to \$7.70/Mcf.

D2006.6.80 – Annual Gas Tracker Review for 2005 and 2006 Periods: This application was filed on 6/1/06 and was consolidated with D2004.7.120. EWM is requesting approval of \$790,000 rate increase for supply related expenses.

D2005.12.177 – USB Charge and Annual Reconciliation of Gas Costs: Filed 12/22/05, EWM has over collected a substantial amount for USB programs and is requesting authorization to donate \$500,000 to Energy Share. EWM also requested authorization to make their own allocation decisions on USB funds so they could be flexible in reallocating those funds rather than having the Commission determine the allocations. MCC has intervened in this docket. The PSC issued Interim Order 6719 on 3/13/06 authorizing a \$50,000 transfer to Energy Share, rather than \$500,000. Larry filed testimony on 5/25/06 discussing the complicated system of discounts that EWM has for its low income program and various sources of USB funding sources as well. MCC thought that there needs to be a discussion with EWM to try and simplify things and to figure out exactly where the money is coming from and where it should go.

### **PPL Montana**

FERC Docket No. ER99-3491 PPL Montana Market Power Issues: MCC has been involved in this issue before FERC for several years in various dockets. FERC

issued a disappointing order denying MCC's request for revocation of PPL's market based authority based on a narrow view of the requirements for market based authority. FERC wanted to only look at a 12 month historical snapshot period rather than at what the situation is actually going to be as these contracts expire. FERC also relied in part on the RFP conducted and PPL's representations that several resources had come forward and had submitted offers to NWE, which was not accurate because they were not base load resources. To the extent that they were baseload resources, they were projects that were not built and could not be built for years into the future. MCC filed a Request for Rehearing, including 21 specifications of error, emphasizing that it was error for FERC not to study the forward looking market and the circumstances that will exist during that period. NWE has also filed a request for rehearing.

### **Avista**

D2006.2.22 – Application for Order Disclaiming Jurisdiction Over Reorganization to Create Holding Company: Filed 2/16/06, Avista is asking the PSC to disclaim jurisdiction. The PSC claims that they have jurisdiction over Avista's Montana customers. MCC will be filing comments probably asking the PSC defer to the Washington Commission due to the small number of customers.

### **PacifiCorp**

D97.7.91 - PacifiCorp Restructuring Plan & Cause No. ADV 2004-955: This case relates to stranded benefits that PacifiCorp has received. MCC appealed the PSC's decision to District Court and received an adverse decision on 11/10/05. The District Court decision found that PacifiCorp's plan had resulted in stranded benefits and therefore, a windfall to the utility. The decision also stated that the sole issue in this case was whether the PSC had authority to distribute that windfall to rate payers since the legislature never contemplated a remedy for such a windfall. MCC disagrees because prior to the restructuring law, well established mechanisms were



in place for handling this type of windfall on the sale or transfer of utility property and everything should have been interpreted in light of the preexisting law that wasn't specifically repealed by that restructuring act. MCC has filed Notice of Appeal to the State Supreme Court and briefs have been filed.

### **Cut Bank Gas Company**

D2006.2.15 – General Gas Rate Increase: Filed 2/3/06, CBG is requesting an increase of \$159,000, or 8.6%. MCC entered into and filed a stipulation with CBG on 5/8/06 for a revenue increase of \$135,000 instead of the \$159,000.

### **City of Great Falls**

D2005.7.110 - Application to Operate a Limited Electricity Supply Program: Larry filed testimony on 3/20/06 saying that MCC does not object to this program since it is limited at this point to less than 20 customers, and, on that basis there did not appear to be adverse effects to the rest of the default supply. Great Falls, would, however, be required to make further applications if they want to expand the program in the future. MCC entered into a stipulation with CGF to this effect, and a hearing was held on 6/28/06.

### **Mountain Water**

D2005.4.49 - Application to Increase Water Rates/Cause No. ADV-2006-389: Filed on 4/8/05, MWC requested a 10% increase in rates. MCC and MWC filed a stipulation proposing a reduction by half, part of the difference being recommendations in return on equity. The PSC issued Final Order 6644c on 2/3/06 that included a few issues MCC did not participate in. The PSC required MWC to stop charging the City of Missoula for fire protection service and to develop tariffs to charge the customers directly instead. Also, it appeared to require an accelerated metering program. MWC requested reconsideration, which MCC joined on, and the

PSC denied. MWC filed a Petition for Review and MCC filed an answer due to being named as a party in MWC's Petition. MCC does support MWC's position in this appeal.

### **West Montana Ventures, LLC**

D2006.6.89 - Application for Approval of Interim Water Rates for Eagle Ridge Estates in Kalispell: Filed on 6/12/06, WMV requested a monthly customer charge of \$30, including the first 1000 gallons, and increasing the commodity charge of \$2.95 - \$10 per 1000 gallon.

### **Utility Enterprises**

D2006.5.71 – Request to Continue Current Rate Structure: Filed on 5/15/06, Utility Enterprises requested a flat rate of \$22.17 plus \$3.58 per 1000 gallons.

### **Landmark Water Company**

D2005.5.75 – Request to Increase Water Rates: Filed on 4/29/05, LWC requested a water rate increase, following a two year initial rate period, from \$29.75 to \$43.88 base rates. LWC also requested commodity rates to increase from \$1.88 to \$2.07 per 1000 gallons for usage above 6000 gallons per month. Following discovery, MCC elected not to file testimony. The PSC issued Final Order 6704a on 7/6/06 approving LWC's request.

### **Energy Policy Act**

N2006.5.60 – Consideration of Adoption of EP Act 2005 Standards re: net metering, Fuel Discovery, Fossil Fuel Generation Efficiency, Smart Metering and Interconnection: The PSC was required by the Energy Policy Act to adopt guidelines or to discuss certain standards relating to net metering, Fuel Diversity,

Fossil Fuel Generation Efficiency, Smart Metering and Interconnection. MCC filed comments on 6/16/06. The Legislature passed a net metering requirement, although it may not fully protect non-participants from providing subsidies because, for example, generation is credited at a full energy rate regardless of value at time of delivery. The PSC addressed fuel diversity, stating generation efficiency has little applicability to Montana jurisdictional generation and that estimates of smart metering costs should be collected and benefits evaluated.

**MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:**

**Eligible Telecommunications Carrier Cases**

D2004.1.6 – Triangle Telephone Systems, Inc: In ETC cases, the PSC has the authority to approve an application for a competitive carrier to get universal service funds. In this case, Triangle is the wireless affiliate of Triangle Telephone Cooperative Association in Central Montana Communications Inc. MCC conducted discovery and filed testimony but the applicant elected not to file rebuttal testimony. A hearing is scheduled for 8/10/06 in Harlem. MCC feels that Triangle has not proved its application to be in the public interest because the parent company gives patronage credits while taking Federal money.

**Qwest**

N2006.6.81 - Qwest Tariff Transmittal 06-10, Residence and Business Customer Incentive Programs: Filed 6/2/06, Qwest is asking the PSC to extend, with some revisions, its Competitive Response Program, which sunsets on 10/4/06. MCC has supported similar applications from Qwest in the past.

D2006.3.39 – Qwest Corporation’s Notification to Offer Certain CLASS Features, AIN Features, Custom Calling Features, Listings and Packages as Not Regulated:

Originally filed 3/27/06, Qwest filed a supplemental filing on 4/10/06. This notice states that Qwest intends to offer many services and functions as not regulated based on the argument they do not fit the statutory definition as 'regulated telecommunications service' in §69-3-803(10)(a). MCC has intervened and filed discovery. Qwest objected to almost all of MCC's requests on the basis that this is strictly a case of constructing the statute and that no facts are relevant or admissible. The PSC overruled all of Qwest's objections on 7/6/06.

### **Court Cases**

Cause No. CDV 2003-464 – Qwest v. PSC and MCC: This case resulted from an attempt by the PSC to address Qwest's overearning. Qwest resisted and prevailed in district court so the issue is now before the Supreme Court. All briefs have been filed and a decision is pending. Qwest files annual reports with the PSC that supposedly replicate what Qwest would show in a rate case and Qwest's 2005 Annual Report showed they earned a return on equity of just under 70%.

### **Arbitration**

D2005.12.174 – Level 3 Communications: This petition was filed for arbitration of an interconnection agreement with Qwest. Level 3 is a competitive local exchange carrier based in Colorado that has an interconnection agreement with Qwest now, but wants various changes made and can not agree with Qwest on many issues, which are now before the PSC. Bob added that when the Federal Telecommunications Act established this process and was implemented by state law, MCC was named a party to these arbitrations, so MCC has participated in some cases, mainly when precedent setting issues are at stake. This case is on hold due to pending results from similar arbitrations in other states.

### **Legislation**

Qwest is backing legislation before the Energy and Telecommunications Interim Committee (LC4144). This bill would essentially deregulate everything except the residence or business line. In some ways, this bill is similar to HB 539 from the last session that failed. MCC opposed HB 539 and has opposed LC 4144. The ETIC will be taking up this issue during its September meeting and Qwest is hoping the ETIC will vote to make it a committee bill. Senator Kitzenberg asked if MCC will be suggesting any legislation for the upcoming legislative session and if so, said that he was open to any ideas. Bob said that MCC currently does not have any particular suggestions and usually just participates in supporting or opposing bills that have potential affect on consumers. Senator Toole asked if MCC was involved in the bill he sponsored last session due to MDU over earning, but through testimony realized that Qwest was a bigger issue than MDU. Bob said that MCC supported that bill. Senator Kitzenberg said that MDU and Qwest were areas of concern for him and he isn't sure if things have changed or if Bob felt the need to review these areas and offer an opinion or plan. Bob said that MCC's efforts have been focused on the Supreme Court case and the assertion there is that the PSC does have the authority and jurisdiction to do something about the over earnings. Hopefully the Supreme Court will agree and issue a decision before the legislative session begins. If the Supreme Court determines the PSC does not have jurisdiction, then there needs to be another effort made to make sure the PSC does have that authority because there is a gap in regulation if the utility is relied upon to come to the regulator. Senator Toole asked if this issue would be resolved and the PSC would have clear authority to initiate rate cases if the Supreme Court decides in favor of the arguments MCC has presented. Bob said that is not entirely clear yet because of the phrasing of the appeal and the background is not entirely clear, we will just have to wait and see what the Supreme Court determines. Senator Toole asked when a decision will be issued. Bob said that they are usually quicker than they have been on this case but it should be any day now. Senator Toole asked if the amount at stake was \$40 million. Bob said he wasn't exactly sure of the amount but it was a quite a bit. Bob offered to provide the committee with PSC staff calculations on this amount. Senator Kitzenberg said those calculations would be great to have.

## **FINANCIAL REPORT**

The current financial report was presented to the committee. It is not a true year end report due to transactions still to be reflected for fiscal year 2006. About \$60,000 will remain in personal services and in contracted services, which is the largest and most difficult category to predict, it is anticipated that about \$40,000 of the \$250,000 contingency will be used. In total, it is estimated that 96% of the budget will be expended. Representative Groesbeck asked Bob if the remaining balance carried over to fiscal year 2007. Bob said the remaining balance will become an offset to the amount collected for next year, but does not increase the budget authority. During the last meeting, the committee asked about FLSA and comp time. The Department of Administration said that MCC was in compliance with requirements. The next meeting date was set for September 13, 2006 at 10:00.

## **HIRING OF EXPERT WITNESSES**

**MOTION:** Representative McNutt moved approval to hire the services of the following expert witnesses:

D2006.3.39 – Qwest Notification to Offer Certain CLASS Features, AIN Features, Custom Calling Features, Listings and Packages as Not Regulated: Al Buckalew

D2006.5.66 - NWE Electric: John Wilson

D2005.6.82 – NWE Merger/EC06-127-000: John Wilson, John Coyle, Al Clark

D2006.5.58 – NWE Gas Tracker – George Donkin

D2004.7.120/D2006.6.80 – Energy West Gas Tracker – George Donkin

D2006.4.54 – MDU Gas Tracker: George Donkin

**VOTE:** The motion passed three to one, with Senator Toole voting no.

## **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.

**Adjournment**

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_, Chairman.